BALOCHISTAN HIGH COURT (QUETTA)

1987

Mr. Justice Amir-ul-Mulk Mengal

BALOCHISTAN HIGH COURT (QUETTA)

Mr. Justice Amir-ul-Mulk Mengal

ZAHIRUDDIN and 4 others …… Petitioner

versus

THE STATE …… Respondent

Mujeeb-ur-Rehman assisted by Mubarak Ahmed, Syed Ali Ahmed Tariq, Khalid Malik, Ehsanul Haq and Mirza Abdul Rashid for Petitioners.

Ch. Muhammad Ejaz Yousuf, Muhammad Moquim Ansari and Basharatullah as Amicus-curia for the State.

Dates of hearing: 19th September, 3rd, 4th and 5th October, 1987.

Criminal Revisions Nos. 38 to 42 of 1987.

Decided on 22nd December, 1987.

JUDGMENT

MR. JUSTICE AMIR-UL-MULK MENGAL.-- I propose to dispose of the following Criminal Revisions by this single judgment since these petitions arise out of common questions of facts and law.

(1)Criminal Revision No.38 of 1987, Zahiruddin v. The State.

(2)Cr. Revision No.39 of 1987, Rafi Ahmed v. The State.

(3)Criminal Revision No.40 of 1987, Abdul Majid v. The State.

(4)Criminal Revision No.41 of 1987, Abdur Rehman v. The State.

(5)Criminal Revision No.42 of 1987, Ch. Muhammad Hayat v. The State.

The relevant facts leading to filing of these petitions are that different F.I.Rs. were lodged against the petitioners with identical allegations that they were wearing badge of 'KALMA TAYYABA' although they were Ahmadis. Consequently challans were put before the Extra-Assistant Commissioner-1, and City Magistrate, Quetta, who after conducting the trial convicted the petitioners under section 298-C, P.P.C. and sentenced each of them to undergo rigorous imprisonment for one year and to pay fine of Rs. 1,000 each and in default to further undergo rigorous imprisonment for one month.

The fact that petitioners are Ahmadis and were wearing badge of KALMA TAYYABA was not disputed by any one of them at the trial.

Being dissatisfied with the order of conviction the petitioners preferred appeals in the Court of learned Sessions Judge, Quetta who was pleased to transfer the same to the Additional Sessions Judge-1, Quetta. After hearing the appellants the learned Additional Sessions Judge-I, Quetta was pleased to dismiss the appeals vide his order dated 16-6-1987.

All these petitions have been filed against the aforesaid orders dated 10-7-1986 passed by City Magistrate and order dated 16-6-1987 passed by Additional Sessions Judge-I, Quetta.

Learned counsel for the petitioners Mr. Mujeeb-ur-Rehman raised several legal questions which were of public importance, hence the Court appointed Mr. Muhammad Moquim Ansari and Mr. Basharatullah, Advocates as amicus curiae. Besides......, Mr. Ejaz Yousuf, was also heard as State counsel.

Before proceeding further it will be proper to dispose of the preliminary legal objections as raised by Mr. Mujeeb-ur-Rehman learned counsel for petitioners. It was vehemently urged that since five separate appeals filed by the appellants, were disposed of by a common judgment, hence learned appellate Court has erred in law by violating the provisions of section 367, Cr.P.C, read with section 424, Cr.P.C. Learned counsel referring to the word "every trial" as used in section 366, Cr.P.C. canvassed that there is no conception under Criminal Procedure Code for consolidating the judgments. It was further averred that even if a common judgment is written, it is required of the judge to discuss the case of each individual accused person separately and with reference to material on record. It was also contended that if a judge without discussing the evidence of every individual accused person separately and distinctly and without making reference to the evidence regarding the individual accused person passes a common judgment, the same becomes erroneous and thus, liable to be set aside with orders of remanding the same for re-writing. Reference was made to the following cases:--

(i)Raja Muhammad v. The State reported in PLD 1965 Karachi 637. In this case it was observed that disposal of two cross-cases by one judgment is not illegal. However, care must be taken that each case should be disposed of separately on material of its record without reference to the material and record of other case.

(ii)The case of Gul Sher v. The State reported in PLD 1963 Karachi 598 wherein it was held that when two appeals are heard together each

appellant is entitled to consideration of his case separately and individually.

(iii)Tahir v. The State reported in 1968 P Cr. L J 465 wherein it was observed that if the judgment of appellate Court is neither setting out facts of case nor points for determination nor discussion of evidence led, the appeal cannot be said to have been disposed of as required by law.

(iv)Another reference to the case of Syed Abdul Waheed v. The State reported in 1968 P Cr. L J 776 also indicates that appellate Court dealing with six appeals and arriving at omnibus judgment was said to have not complied with the relevant provisions of Cr.P.C. and the case was remanded for rehearing and decision by separate judgment on evidence in each case.

(v)Finally the case of Kalubepari v. The State reported in PLD 1958 Dacca 549 was relied upon wherein it was held that final Court of appeal on facts, at least, give some indication in its judgment as to the application of its mind to the evidence from which at least the Court of revision would be in a position to judge whether there had or had been a proper appreciation of evidence and all the points falling to be decided in the case by the final Court of appeal on facts.

From the perusal of the aforesaid judgments and section ,24, Cr.P.C. it may be observed that the judgment of the appellate Court should deal with the material on record and should contain reasons for inferences drawn or conclusions reached regarding each individual accused persons. The other purpose seems to be that the judgment of the appellate Court should be such as to enable the High Court in revision to grasp the nature of the case without reference to the record. If a judgment deals with the material on record and also discusses the relevant provision of law and gives reasons for its conclusions, said judgment,

cannot be said to have been passed in violation of section 424, Cr.P.C.

Applying the observations made in the cases referred to hereinabove to the present case, it may be pointed out that the learned Appellate Court has dealt with the legal as well as factual aspects of the case. Since all the petitioners have admitted the fact that being Ahmadis they were wearing badge of KALMA TAYYABA hence the point for determination was whether or not they have committed an offence within the meaning of section 298-C, P.P.C. This point was common in all the appeals hence it cannot be said that the appellants were prejudiced in any manner by common judgment or that the learned appellate Court failed to abide by the provisions of sections 367 and 424, Cr.P.C. I have perused the judgment of the appellate Court in the light of the arguments advanced by the learned counsel for the petitioners and I see no reason to hold that the same s in contravention of section 424, Cr.P.C. The reason being that the nature of the offence was the same i.e. being Ahmadis the petitioners were wearing badge of KALMA TAYYABA. There was no occasion to make reference or to discuss the evidence as led by the prosecution for the reason that all the petitioners admitted before the trial Magistrate that they are Ahmadis and were wearing badge of Kalma Tayyaba. All of them took a common stand that by doing so they in fact have committed no offence. Since in all the five petitions, point for determination was whether wearing of badge of KALMA TAYYABA by Ahmadis constitutes an offence within the purview of section 298-C, P.P.C. hence common judgment did not suffer from any legal infirmity. Furthermore, no injustice has been caused to the petitioners. I, therefore, see no reason to dislodge the judgment on this preliminary legal objection.

It was next contended by Mr. Mujeeb-ur-Rehman that the conviction awarded to the petitioners is not sustainable as the charge put to the petitioners was defective. According to learned counsel, the Magistrate while framing charge violated provisions of Chapter XIX Cr.P.C.

particularly section 223, Cr.P.C. Learned counsel contended that the charge as read out to the petitioners was different from the questions put to the petitioners under section 342, Cr.P.C. The contention was that questions as put to the petitioners in their statements recorded under section 342, Cr.P.C. could not have been put to the petitioners without first amending the charge to that effect. In order to appreciate the aforesaid contention it may be profitable to reproduce the charge against the petitioners, which was as follows:-

”تم پر یہ الزام ہے کہ تم نے قادیانی / احمدی ہوتے ہوئے کلمہ طیبہ کا بیج لگا کر زیر دفعہ ۲۹۸ج تعزیرات پاکستان کی خلاف ورزی کی ہے۔ کیا تم جرم سے انکار کرتے ہو یا اقرار کرتے ہو“۔

The relevant question put to the petitioners under section 342, Cr.P.C. was as under:-

س: کیا یہ درست ہے کہ آپ نے کلمہ طیبہ کا بیج لگا کر قادیانی ہونے کے ناطے مسلمانوں کی دل آزاری کی ہے۔ اس لئے تم نے جرم ۲۹۸ج تعزیرات پاکستان کا ارتکاب کیا ہے۔“

Mr. Mujeeb-ur-Rehman urged with the considerable vehemence that there was palpable inconsistencies in the question put to the accused/petitioners under section 342, Cr.P.C. and the contents of the charge. This according to the learned counsel caused great prejudice to the petitioners in their defence inasmuch as they were misled.

After perusal of the relevant provision of Cr.P.C. relating to framing of charge, irresistible conclusion would be that the object of framing of charge appears to enable an accused person to exactly know the allegations which he has to meet and for which he should be ready before taking of evidence. The legal requirement in this context would be to provide the particulars of the offence with which the accused person is charged with certainty and accuracy of facts. If the accused person is well-aware of the allegations which the prosecution wants to prove against him and he knows the substantive charge which he is to meet, the object of framing of charge would be satisfied.

Relying on the case of Sardar Gian Singh v. Emperor as reported in A I R 1938 Lahore 828 and the case of Muhammad Ehsan Khan v. State as reported in 1968 P Cr. L J. 759, the learned counsel argued that the "manner" in which the offence was committed must specifically be put to the accused in the charge. I have perused the aforesaid two judgments. Both of which incidently pertain to the offence of cheating and it was observed in the aforesaid cases that the term "manner" in section 223, Cr.P.C. includes with reference to an offence of cheating, every ingredient by virtue of which the act ceases to become one of mere non-criminal deception and becomes one of cheating within the meaning of section 415, P.P.C. and the effect of the deception upon the victim's body, mind, reputation or property would thus, be a part of the "manner" of cheating.

Examining the facts of this case in the light of observations made in aforesaid cases as well as the provisions enshrined in Cr.P.C., I am of the view that the charge has been properly put to the petitioners and petitioners were not misled in any manner in setting up the defence. The slight change in the questions put under section 342, Cr.P.C. has in no manner handicapped the petitioners in their defence because the questions so put were akin in substance, covering ingredients of section 298-C, P.P.C. The petitioners were well aware that they were facing charge under section 298-C, P.P.C. They, therefore, took a common plea that by wearing badge of Kalma Tayyaba they have committed no offence under law because Kalma Tayyaba is part of their religion. I failed to understand how the petitioners were hampered in their defence or were in any manner prejudiced from the questions put to them under section 342, Cr.P.C. The result, therefore, would be that this objection is not tenable, thus, the same is overruled.

This leads us to the moot question which needs determination and which may be put as under:-

"Whether by wearing a badge of Kalma Tayyaba the petitioners who were Qadiyanis have committed an offence within the meaning of section 298-C, P.P.C.

Lengthy and dexterous arguments were advanced by Mr. Mujeeb-ur-Re-hman and learned Amicus Curiae on this point. The contentions raised by Mr. Mujeeb-ur-Rehman may be summarised on the point as under:-

(a)Wearing of badge of Kalma Tayyaba does not constitute an offence within the meaning of section 298-C, P.P.C, because Kalma Tayyaba has not been expressly mentioned in section 298-C, P.P.C. and on the principle of literal construction it cannot be deduced that it forms part of section 298-C, P.P.C.

(b)The omission to mention Kalma Tayyaba in section 298-C is not accidental but it is intentional. The legislature was fully well aware that saying or uttering Kalma Tayyaba is common between Muslims and Ahmadis.

(c)The criminal law should be interpreted strictly and that too in favour of the subject. The principle of Expressio Unius Est Exclusio Alterious i.e. Express mention implied exclusion was not properly appreciated by Courts below.

(d)That in order to construe the true meaning of section 298-C, P.P.C. the Rule of "Ejusdem Generis and Nosoitur Associis" are applicable.

(e)It was further contended that "Or" as used several times in section 298-C, P.P.C. has been used mostly in explanatory and illustrative form. The same has been used very often neither in conjunction nor in disjunction. However, the learned counsel submitted that only three offences are made out in section 298-C, P.P.C.

(f)That mens rea is the basis of commission of any offence which is lacking in the present case.

On the other hand the learned Amicus Curiae Mr. Muhammad Moquim Ansari as well as Mr. Basharatullah, advanced lengthy arguments. The salient features of their arguments may be summed up as under: -

(i)The intention of the Legislature is manifest and clear. The literal and grammatical meanings of the words used in the aforesaid sections required no further interpretation. The Rule of Ejusdem Generis and Noscitur Associis are not applicable, because the intention of legislature is absolutely clear.

(ii)Going through the legislative history on the point, the learned amicus curiae submitted that sections 298-B and 298-C, P.P.C. are independent sections creating distinct offences. Section 298-B, relates to protect the Holy names, titles and places, whereas section 298-C, describes offences pertaining to general behaviour.

(iii)It was further contended by them that intention of legislature can best be inferred from the preamble of a particular statute which provides a guideline indicating the intention of the legislature.

In order to appreciate the contentions as raised by the learned counsel for the parties it would be proper at this stage to reproduce Ordinance XX of 1984 called as Anti-Islamic Activities of Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984:-

"Ordinance XX of 1984 Anti-Islamic Activities of Qadiani Group, Lahore Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984.

An Ordinance to amend the law to prohibit the Qadiani Group Lahori Group and Ahmadis from indulging in Anti-Islamic activities.

(Gazette of Pakistan, Extraordinary, Part I, 26th April, 1984).

No. F.17(l)/84-Pub.--The following Ordinance made by the President is hereby published for general information:-

Whereas it is expedient to amend the law to prohibit the Qadiani Group, Lahori Group and Ahmadis from indulging in Anti-Islamic activities:

And whereas the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now, therefore, in pursuance of the Proclamation of the fifth day of July, 1977, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

PART I—PRELIMINARY

1. Short title and commencement.--(1) This Ordinance may be called the Anti-Islamic Activities of Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984.

(2) It shall come into force at once.

2. Ordinanace to override orders or decisions of Courts.- The provisions of this Ordinance shall have effect notwithstanding any order or decision of any Court: -

PART II—AMENDMENT OF THE PAKISTAN PENAL CODE (ACT XLV OF 1860)

3. Addition of new sections 298-B and 298-C. Act XLV of I860.-- In the Pakistan Penal Code Act (XLV of 1860), in Chapter XV, after section 298-A, the following new sections shall be added namely: -

“298-B. Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places.- (1) Any person of the Qadiani Group or the Lahori Group (who call themselves ‘Ahmadis’ or by any other name) who by words, either spoken or written, or by visible representation:-

(a)refers to or addresses, any person, other than a Caliph or companion of the Holy Prophet Muhammad (peace be upon him), as 'Ameer-ul-Mumineen', 'Khalifa-tul-Mumineen', 'Khalifa-tul-Muslimeen', 'Sahaabi' or 'Razi Allah Anho';

(b)refers to, or addresses, any person, other than a wife of the Holy Prophet Muhammad (peace be upon him), as 'Ummul-Mumineen';

(c)refer to, or addresses, any person, other than a member of the family (Ahle-bait) of the Holy Prophet Muhammad (peace be upon him), as Ahle-bait; or

(d)refers to, or names, or calls, his place of worship as 'Masjid';

shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

(2) Any person of the Qadiani Group or Lahori Group (who call themselves 'Ahmadis' or by any other name) who by words, either spoken or written, or by visible representation, refers to the mode or form of call to prayers followed by his faith as 'Azan, or recites Azan as used by the Muslims, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

298-C. Person of Qadiani Group, etc., calling himself a Muslim or preaching or propagating his faith.- Any person of the Qadiani Group or the Lahori Group (who call themselves 'Ahmadis' or by any other name), who, directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representations, or in any manner whatsoever outrages the religious feelings of

Muslims, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine. "

As the outset it was strenuously urged by learned counsel for the petitioners that to construe real meaning of the words used in an enactment and to know intention of the legislature, it is a well-settled principle that a statute must be read as a whole. According to the learned counsel it is the statute which is to be read as a whole and not some sections from here and there which may be read together. On this legal proposition the learned counsel argued further that section 298-B and section 298-C, PPC are both part of the same statute i.e. Ordinance XX of 1984, therefore, when there is ambiguity, (as according to the learned counsel the words of section 298-C, PPC are ambiguous) the same is to be interpreted with reference to section 298-B, PPC. It was further contended that only those actions of Qadianis which have been prohibited under section 298-B, PPC have been made punishable in section 298-C. According to the learned counsel a Qadiani or Ahmadi is said to have posed himself as a Muslim under section 298-C, PPC if he refers to or addresses to any other person, other than a Caliph or companion of the Holy Prophet Muhammad (peace be upon him), as 'Ameer-ul-Mumineen', 'Khalifa-tul-Mumineen', 'Khalifa-tul-Muslimeen', 'Sahaabi' or 'Razi Allah Anho' or for that matter recalls his place of worship as Masjid etc. which are mentioned in section 298-B (1), (a), (b), (c) and (d). Thus, the learned counsel attempted to conclude that since reciting of KALMA TAYYABA or wearing badge of Kalma Tayyaba are not mentioned in any of the clauses of section 298-B, the same cannot, therefore, be presumed to be offences in section 298-C, PPC. Having resort to the maxim expresso unius exclusio alterius, it was argued that the provisions of section 298-C are general whereas offences mentioned in section 298-B are particulars, therefore, the particular excludes the general and thus section 298-C, PPC provides only those actions as offences which are particularly and expressly mentioned in section 298-B, PPC. Another limb of

the arguments of the learned counsel for the petitioners was that it is not the function of the court to add words in the statute which otherwise are omitted by legislature. Since Kalma Tayyaba has not been mentioned, rather it is omitted in section 298-C , PPC, therefore, the same cannot be extended into or added to section 298-C, PPC. In fact the learned counsel was describing a well-settled rule of interpretation that offence cannot be created by implication.

In support of the aforesaid contention the learned counsel relied on the case of Khizar Hayat v; Commissioner Sargodha Division and others PLD 1965 Lah. 349. It was held in the aforesaid case that it is well-settled rule that the courts cannot extend a statute to meet a case for which provision has clearly and undoubtedly not been made. In this connection the following passage from Craies on Statute Law, Sixty Edn. from page 70, was also reproduced:-

> "The authorities on this subject are numerous and unanimous. No case can be found to authorise any Court to alter a word so as to produce a 'casus omissus', said Lord Halsbury in Mersey Docks v. Henderson. In Crawford v. Spooner, the Judicial Committee said: We cannot aid the Legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there. 'In 1951 in Magor and St. Mellons R.D.C. v. Newport Corp. It was held by the House of Lords, that a Court has no power to fill any gaps disclosed in an Act. To do so would be to usurp the function of the Legislature."

The case of Qasu and two others v. The State reported in PLD 1969 Lah. 48 and the relevant observations being at page 52 read as under: -

> "It is exiomatic that nothing is to be added to a statute, and words are not to be read into it. 'A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission

consequently to have been unintentional' has been quoted as the gist of the decision in Lloyds Bank v. Elliot by Maxwell in his book Interpretation of Statutes, Eleventh Edition, at page 12, under the heading 'Omission not to be Lightly Inferred'."

The third case referred to in support of the aforesaid contention was the case of Ch. Khadim Hussain v. The State PLD 1985 S C (AJ and K) page 125. On page 130 while following the principles laid down by the Supreme Court in case of State v. Zia-ur-Rehman and others reported in PLD 1973 S C 49 it was observed as' under:-

"It is only in the case of any ambiguity that a Court is entitled to ascertain the intention of the legislature by construing the provisions of the statutes as a whole while taking into account the circumstances which led to the enactment of the statute. The rule is well-founded that a statute has to be construed as a whole and every part of the statute is to be given a meaning consistent with the other provision thereof."

The aforesaid rules of interpretation or any other rules have been devised so as to exactly ascertain or discover the legislative intent in a statute. The fundamental and basic phenomena is to give effect to the legislative intent from the words used in a statute. If the words are plain and clear, need does not arise to have resort to different rules of interpretation but to give effect to the ordinary grammatical meaning of the words used in an enactment. This is now almost a well-settled law and if any reference is at all necessary reliance may be placed on the case of S.A.Haroon v. Collector of Customs, Karachi as reported in PLD 1959 SC (Pak.) 177. The relevant observations made by the Hon'ble Supreme Court as follows:--

"All rules of interpretation have been devised as aids to the discovery of the legislative intent behind an enactment. Where the words are plain and unambiguous that intent can be best judged by giving full effect to the ordinary grammatical

meaning of those words. But when this is not the case, an attempt should be made to discover the true intent by considering the relevant provision in the context of the whole Act in which it appears and by having regard to the circumstances in which the enactment came to be passed. The previous state of law the mischief sought to be suppressed and the new remedy provided are relevant factors to be given due consideration."

It is further a well-established principle of construction that the Courts are not supposed to add or to take from a statute anything unless there are adequate grounds to justify the inferences that the legislature intended something which was omitted to express. The intention of the legislature in the present case is manifest, unambiguous and clear. The same may be deduced from the legislative history, as aptly put by Mr. Basharatullah, learned amicus curiae. The first stage existed till 21-9-1974, when there was no express provision in law or under Constitution that Qadianis were non-Muslims. The second stage emerged when Constitution (Second Amendment) Act, 1974 was introduced in the Constitution of Islamic Republic of Pakistan (hereinafter referred to as the "Constitution"), on 21st of September, 1974. In the aforesaid amendment the following clause was added in Article 260 after clause (2):-

"(3) A person who does not believe in the absolute and unqualified finality of the Prophethood of Muhammad (peace be upon him) the last of the Prophets or claims to be a Prophet, in any sense of the word or of any description whatsoever, after Muhammad (peace be upon him), or recognizes such a claimant as a Prophet or a religious reformer, is not a Muslim for the purposes of the Constitution or law."

It was the stage when the legislature made a declaration that Qadianis are non-Muslims. After being declared as non-Muslims the Qadianis or Ahmadis etc.

continued to claim themselves to be Muslims, but there was no penal section under any law to forbid them from claiming to be Muslims. However, for the purpose of the constitutional rights they were non-Muslims. Hereinafter came the next stage when Muslims and non-Muslims were specified in the Constitution by an amendment so made in the Constitution, known as Constitution (Third Amendment) Order, 1983. Then came the last stage when it was felt necessary to provide penal clauses in law to give effect to the Constitutional amendment as mentioned hereinabove. This was done by Ordinance XX of 1984 already reproduced in the preceding paras by virtue of which sections 298-B and 298-C were introduced in the Pakistan Penal Code. It starts with the preamble:--

"Whereas it is expedient to amend the law to prohibit the Qadiani Group, Lahori Group and Ahmadis from indulging in anti-Islamic activities;"

meaning thereby that Qadianis being non-Muslims continued indulging in anti-Islamic activities. From this brief survey of legislation in respect of the status of Qadianis it may be conveniently gathered that Ordinance XX of 1984 was primarily meant to curb the activities of Qadianis from indulging in anti-Islamic Activities. The aforesaid amendment provided two sections 298-B and 298-C in Pakistan Penal Code. Section 298-B, P.P.C. is admittedly particular in its contents and certain actions have been forbidden under law which have already been mentioned in clause (1), sub-clauses (a) to (d) of section 298-B and sub-clause (2) provides punishment for the same. But the legislature further felt it necessary to add section 298-C which covers the general behaviour and conduct of Qadianis towards Muslims.

From the above discussion, I conclude and hold that section 298-B, P.P.C. and section 298-C, P.P.C. are two independent sections creating distinct offences. Section 298-B is primarily intended to protect the Holy names, titles, personages, places etc., from misuse. But section 298-C prescribes punishment for conduct and general behaviour

of a Qadiani if he directly or indirectly poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to, accept his faith, by words either spoken or written, or by visible representation or in any other manner whatsoever outrages the religious feelings of the Muslims. It is thus clear that there is no ambiguity in the words used in section 298-C, P.P.C. to discover the legislative intent. Mr. Mujeeb-ur-Rehman the learned counsel for petitioners then adopted another argument by contending that if the meaning of words used in a particular enactment or section thereof are ambiguous or two or some more words are susceptible of analogous meanings, they are understood to be used in their cognate sense. It was urged with vehemence that the words take their colours from similar words as are conjointly used in a particular provision of law. It in fact is the rule of Noscitur Associis. But from the bare perusal of section 298-C, P.P.C. it transpires that the aforesaid rule is not applicable because as already observed, section 298-C is an independent section creating distinct offences. I am, therefore, of the firm opinion that no other rule of interpretation or construction can be adopted in interpreting section 298-C, P.P.C. except that the legislative intent can be well-judged by giving effect to grammatical meanings of these words as well as scheme of the Ordinance. It thus, ends the discussion on this point.

Now adverting to the interpretation of the words as used in section 298-C, P.P.C., it is to be seen whether these words are susceptible of different meanings, connote more than one meaning or these are aptly used to indicate in the simplest form, the intention of the legislature. In this regard the first word which came to limelight was the word "pose" as used in the section. It was rightly pointed but by Mr. Mujeeb-ur-Rehman, the learned counsel for the petitioners that the word "pose" is in fact not a judicial word and it is not commonly used in legal terminology. It does not find mention. .... anywhere in any.... ..Judicial Dictionary. However, the word "pose" as used in the Concise Oxford Dictionary 6th Edition means (1) formulate

(assertion, claim, etc.); propound (question, problem); place (artist's model etc.) in certain attitude. 2. Assume an attitude, esp for artistic purposes, or to impress others; set up, give oneself out, as (connoisseur etc.); as, pretend to be, (3). Attitude of body or mind, esp. one assumed for effect. Likewise the word "Pose" as defined in Shorter Oxford English Dictionary, Volume II Third Edition revised, means an act of posing, an attitude or posture of the body, or of a part of the body, esp. one deliberately assumed, or in which a figure is placed for effect, or for artistic purposes, fig. An attitude of mind, esp. One assumed for effect, inter to assume a certain attitude. Similarly in Legal Thesaurus the word "Pose" means act as, act the part of, ape, assume the character of, assume the role of ...... but the State Counsel Mr. Ejaz Yousuf, relied on the definition used in Corpus Juris Secundum wherein it means, affirm, to state as a proposition. The learned State Counsel then went on defining the word "affirm" and then allude but this was seriously objected to Mr. Mujeeb-ur-Rehman on the ground that meaning of words cannot be construed in that manner.

However, the simplest meaning of pose as used herein seems to be assumed the role of or to pretend to be what in fact one is not. Thus, in its simplest form if a Qadiani poses himself as Muslim means when he acts as a Muslim or he assumes the role of a Muslim. Thus, when a Qadiani by his conduct or by any positive act, assumes the role of a Muslim and acts as a Muslim, his act falls within the mischief of section 298-C, P.P.C. For instance if a Qadiani displays or brands himself by affixing badge of Kalma Tayyaba as in the instant case, he poses himself to be a Muslim.

The next word as repeatedly used in this section is "Or" accordingly to the learned counsel the word "or" has mostly been used in an illustrative or explanatory form. It has neither been used in conjunctive nor disjunctive form. However, according to the learned counsel, section 298-C, creates three offences which are as under -

(1)if a Qadiani, who directly or indirectly poses himself as Muslim or calls or refers to his faith as Islam:

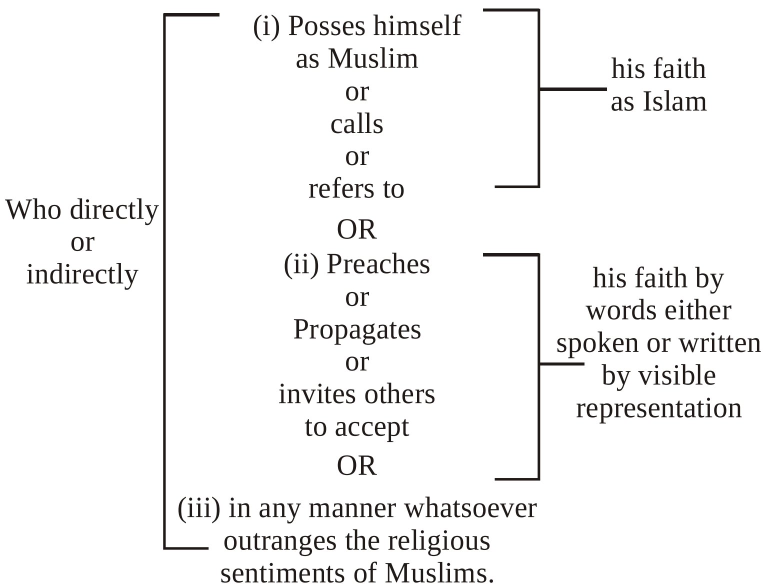
(2)Preaches or propagates or invites others to accept his faith by words either spoken or written or by visible representation.

(3)in any manner whatsoever outrages the religious sentiments of Muslims.

Thus, according to the learned counsel the word "or" has been used only twice as disjunctive and the remaining "or" has been used in conjunctive or in illustrative form.

The learned counsel attempted to substantiate his version with the help of the following chart which he himself prepared and which is reproduced as follows:-

CHART I
SECTION 298-C



Mr. Basharatullah on the other hand contended that "OR" has been used disjunctively creating 7 offences in section 298-C, P.P.C. Be that as it may, the question put in

simplest form is if a Qadiani poses himself as a Muslim or...commits an offence within the meaning of section 298-C, P.P.C. The word Muslim as defined by the Constitution means a person who believes in the unity and oneness of Almighty Allah, in the absolute and unqualified finality of the Prophethood of Muhammad (peace be upon him), the last of the prophets, and does not believe in, or recognizes as a prophet or religious reformer, any person who claimed or claims to be a prophet, in any sense of the word or of any description whatsoever, after Muhammad (peace be upon him). Thus, a person enters the realm of Islam only if he believes in the unity and oneness of Almighty God and in the absolute and unqualified finality of Prophethood Muhammad (peace be upon him) as last of the Prophets. Learned Amicus Curiae Mr. Muhammad Moquim Ansari rightly pointed out that KALMA TAYYABA is not a Shiaar as pointed out by Mr. Majeeb-ur-Rehman but it is one of the fundamentals of Islam without which no one can be entered in Din-e-Islam. It was also pointed out by learned State Counsel Mr. Ejaz Yousuf that as per Sahhie Bukhari Sharif, KALMA TAYYABA is one of the five fundamentals of Islam. It is otherwise known that whenever a non-Muslim converts his religion and adopts Din-i-Islam, the first fundamental is that he recites KALMA TAYYABA. There is thus, no cavil that KALMA TAYYABA is one of the fundamentals of a Muslim. He, who recites KALMA TAYYABA is generally known to be a Muslim. Thus, when a Qadyiani wears a badge of KALMA TAYYABA and roams in the streets, he poses himself to be a Muslim. In the instant case the petitioners admit that being Qadianis they have affixed badge of KALMA TAYYABA when they were apprehended. There remains thus, hardly any doubt that the petitioners committed an offence within the meaning of section 298-C, P.P.C. The petitioners failed to put any explanation for affixing the same except that as per arguments of the learned counsel for the petitioners that KALMA TAYYABA is common Shiaar between Muslims and Qadianis. This aspect has been thoroughly and dexterously dealt by the Federal Shariat Court in the case of Majib-ur-Rehman and 3 others v. Federal Government of

Pakistan and another as reported in PLD 1985 F.S.C. 8 and it was observed at page 111 as under:-

"This Injunction is prohibitory of the Idol worshippers performing their Shia'ar in Kaa'ba and the decree of the Holy Prophet ﷺ was prohibitory of their Shia'ar of Hajj (see Tafheemul Qur'an, Vol.2, p.186, note 25). It is thus, obviously concluded from it that Islamic Sharia does not allow a non-Muslim to adopt Shia'ar of Islam, because Shia'ar means the distinguishing features of a community with which it is known."

This may be a complete answer to the arguments advanced by the learned counsel for the petitioners.

Now I embark upon to determine yet another point raised by Mr. Mujeeb-ur-Rehman that no criminal offence can be made out unless mens rea is proved, on the part of the accused. According to the learned counsel since KALMA TAYYABA being common between Qadianis and Muslims hence the same was in fact affixed not with an intention to ridicule KALMA TAYYABA or to pose themselves as Muslims or injure the feelings of Muslims but just to practice their own religion and there was no intention or mens rea for doing so. On the other hand Mr. Basharatullah, the learned-Amicus Curiae pointed out that generally criminal intention is fundamental ingredient for commission of an offence but it is not always to be found out in any particular offence. According to the learned Amicus Curiae there are provisions in Pakistan Penal Code in which no criminal intention is revealed. Reference was made to sections 124-A, 131, 340, 140 and 402-A, P.P.C.

Be that as it may, it is to be seen in the instant case as to what was the intention of the Qadiyanis to wear badge of KALMA TAYYABA and to go in crowded streets? The obvious reason seems to be that the petitioners intended to make the people believe that they are Muslims. This depicts the criminal intention or mens rea on their part. Thus, it cannot be argued, keeping in view the admitted facts of this case, that the petitioners acted with no mens

rea or criminal intention because petitioners failed to give or assign any reason for affixing badge of KALMA TAYYABA while going out in busy streets of the town except that they pretended to be Muslims or they wanted others to believe that they are Muslims.

The last but the most pertinent question in this petition was about the vires of Ordinance XX of 1984. Although Mr. Mujeeb-ur-Rehman has very candidly conceded that vires of any legislation cannot be challenged in exercise of revisional jurisdiction of this Court yet he attempted to argue this point indirectly. However, undoubtedly vires of any legislation cannot be challenged collaterally or incidentally before High Court in its revisional jurisdiction, as in this capacity question regarding illegality, impropriety, excess of jurisdiction or illegal assumption of jurisdiction by subordinate courts can only be scrutinized. It may be seen that this law (Ordinance XX of 1984) even otherwise has been declared as a valid piece of legislation by the Federal Shariat Court in case of Mujeeb-ur-Rehman and others v. Federal Government of Pakistan and another reported in PLD 1985 F S C 8. It was also pointed out by Mr. Mujeeb-ur-Rehman that1 appeal against the aforesaid judgment is sub judice before the Supreme Court. As per Article 203-GG of the Constitution, the verdict of Federal Shariat Court is binding on the High Court. The said provision of the Constitution is hereby reproduced:-

> "203-GG. Subject to Articles 203-D and 202-F, any decision of the Court in the exercise of its jurisdiction under this Chapter shall be binding on a High Court and on all Courts subordinate to a High Court.

Thus, this Court while exercising revisional jurisdiction shall not call in question the validity of Ordinance XX of 1984.

So far as merits of the case are concerned, as discussed hereinabove, the petitioners have admitted that they are Qadiyanis and were wearing badge of KALMA TAYYABA, and no explanation whatsoever has come on record as to

why they did so. The above factual and relevant legal aspects have been appropriately discussed and determined by the trial Court as well as appellate Court. There is apparently no illegality, impropriety or excess or failure of jurisdiction in deciding the matter, warranting interference.

The upshot of the above discussion is that I find no merits in these petitions. However, regarding quantum of sentence taking into consideration the peculiar circumstance of case and the fact that petitioners are first offenders a lenient view is taken. Thus, the sentence of each of the petitioners is reduced from 1 year R.I. to 9 months' R.I. the amount of fine, however, shall remain the same.

Resultantly, with the aforesaid reduction in sentence all the five petitions are dismissed.

Before leaving the case, I feel it incumbent to note my appreciation for the valuable assistance rendered by Mr. Mujeeb-ur-Rehman, and the learned Amicus Curiae, Mr. Basharatullah and Mr. Muhammad Moquim Ansari, Advocates, as well as Mr. Ejaz Yousuf.

Petitions dismissed.

(PLD 1988 QUETTA 22)

